

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the
License of Mary Fiola

**ORDER ON THE RESPONDENT'S
APPLICATION FOR ATTORNEY'S
FEES AND COSTS**

The above-entitled matter is now pending before Administrative Law Judge Jeanne M. Cochran on the Licensee's application for attorneys' fees and costs under the Minnesota Equal Access to Justice Act (MEAJA).¹ The Licensee filed her application on August 24, 2012.² The Department of Human Services (Department or DHS) filed its objection to the application on September 6, 2012.³ The Ramsey County Attorney's Office also filed an objection to the application on September 6, 2012.⁴ The Licensee filed a reply on September 13, 2012.⁵ Oral argument on the matter was held on January 22, 2013, at the St. Paul offices of the Office of Administrative Hearings, and the record closed on that date.

Steven A. Smith, Attorney at Law, Nichols Kaster, PLLP, appeared on behalf of Licensee, Mary Fiola. Cynthia B. Jahnke, Assistant Attorney General, appeared on behalf of the Department.

Based upon the filings of the parties and the oral argument, the undersigned Administrative Law Judges make the following:

¹ Minn. Stat. § 15.471, *et seq.* (2012).

² Application for Attorneys' Fees and Expenses and Supporting Documents (August 24, 2012) (Licensee's Application).

³ Objection of the Minnesota Department of Human Services to Application for Attorneys' Fees and Expenses (September 6, 2012) (Department's Objections).

⁴ Objection of the Office of the Ramsey County Attorney to Application for Attorney's Fees and Costs (County's Objections) (September 6, 2012).

⁵ Reply to Objections to Application for Attorneys' Fees and Expenses (September 13, 2012) (Licensee's Reply).

ORDER

For the reasons set forth in the Memorandum that follows, the Licensee's Application for Attorneys' Fees and Costs is DENIED.

Dated: February 7, 2013

s/Jeanne M. Cochran

JEANNE M. COCHRAN
Administrative Law Judge

MEMORANDUM

I. Prior Proceedings

The Licensee's application for attorney's fees and costs arises from her appeal of the Department's maltreatment finding, disqualification determination, and revocation of her family child care license. On March 20, 2012, after an evidentiary hearing, Administrative Law Judge Linda Close (ALJ Close) issued her report recommending that the Commissioner rescind the maltreatment finding, reverse the disqualification determination, and reverse the revocation of the family child care license. ALJ Close concluded that the Department had failed to demonstrate by a preponderance of the evidence that Licensee had maltreated a vulnerable adult who resided at a facility for developmentally disabled adults, where Licensee worked at night, as alleged by the Department. As a result, ALJ Close also recommended that the disqualification and revocation decisions be reversed. On July 25, 2012, the Commissioner of Human Services issued a final decision and Order adopting ALJ Close's report.

II. The Licensee's Application for Attorney's Fees and Costs

A. Positions of the Parties

On August 24, 2012, the Licensee filed an application under the Minnesota Equal Access to Justice Act (MEAJA),⁶ seeking an award of attorneys' fees of \$59,476.25, plus costs in the amount of \$2,736.17.⁷ In support of her application, she asserts that she qualifies as a "party" within the meaning of MEAJA because she owns and operates an unincorporated small business. She also asserts that she does not fall within the group of DHS licensees excluded from the definition of "party." MEAJA provides that a "party" does not include:

a person providing services pursuant to licensure or reimbursement on a cost basis by the Department of Health or the Department of Human Services, when that person is named or admitted or seeking to be admitted as a party in a matter which involves the licensing or

⁶ Minn. Stat. §§ 15.471 - 15.474 (2012).

⁷ Licensee's Application at 4.

reimbursement rates, procedures, or methodology applicable to those services.⁸

Ms. Fiola, the Licensee, argues that this exception does not apply because the alleged maltreatment of the vulnerable adult that led to the disqualification and revocation of her day care license did not occur at her day care and “had absolutely nothing to do with the services that [the Licensee] offered to her daycare children or their families.”⁹ In addition, she asserts that she prevailed in the proceeding as required by Minn. Stat. § 15.472(a); and that the Department’s position in the proceeding was not substantially justified, within the meaning of Minn. Stat. § 15.471, subd. 8. Finally, she asserts that the attorneys’ fees and expenses requested are reasonable.¹⁰

On September 6, 2012, the Department filed objections to the Licensee’s application. The Department raised three defenses: first, that as a service provider licensed by the Department, the Licensee is statutorily excluded from recovery under the MEAJA; second, that the Department’s position was substantially justified; and third, that even if an award were proper, the attorneys’ fees and expenses requested are excessive.¹¹

Ramsey County also filed objections to the Licensee’s application. Ramsey County objected on the grounds that the Licensee does not meet the definition of a “party” under the MEAJA, that the State’s position at the hearing was substantially justified, and that the Licensee has failed to provide any evidence regarding the reasonableness of the fees and expenses requested.¹²

On September 13, 2012, the Licensee filed a reply to the Department’s objections. She again argued that the exception to the term “party” did not apply to her because the maltreatment allegations that led to the disqualification did not involve her day care services. The Licensee also reiterated that the State’s position was not substantially justified, and that the fees and expenses incurred are reasonable. Finally, the Licensee requested that Ramsey County’s objections be stricken because, in the view of the Licensee, Ramsey County does not have standing to object to the application for attorney’s fees and expenses.¹³

B. Applicable Law

MEAJA authorizes an award of attorney fees and costs to a prevailing “party” in contested cases. However, because the Act is a limited waiver of sovereign immunity,

⁸ Minn. Stat. § 15.471, subd. 6(c).

⁹ Licensee’s Application at 3; see *also*, Argument of Steven Smith (January 22, 2013).

¹⁰ *Id.* at 2-4.

¹¹ Department’s Objections at 3-8.

¹² County’s Objections at 2-3.

¹³ Licensee’s Reply at 1-4. Licensee’s request to strike Ramsey’s County’s objections is denied. Minn. R. 1400.8401 expressly allows any party to the proceeding to respond or object to an application for expenses and fees. Because Ramsey County is a party to this proceeding, it is permitted to file an objection within the time provided under the rule.

the language of the act must be strictly construed.¹⁴ “Party” is defined in a restrictive fashion in the Act to include only small businesses (those with not more than 500 employees and annual revenues not over seven million dollars) and partners, officers, shareholders, members, or owners of such entities.¹⁵ Recovery is available only against the State,¹⁶ and only in cases where the State’s position is represented by counsel and is not substantially justified.¹⁷ The term “substantially justified” is defined as: “the [S]tate’s position had a reasonable basis in law and fact, based on the totality of the circumstances before and during the litigation or contested case proceeding.”¹⁸

C. The Licensee is Statutorily Excluded from the Class of Qualified Applicants

Moreover, MEAJA expressly excludes the following individuals from the class of qualified applicants:

(c) ‘Party’ does not include a person providing services pursuant to licensure or reimbursement on a cost basis by the Department of Health or the Department of Human Services, when that person is named or admitted or seeking to be admitted as a party in a matter which involves the licensing or reimbursement rates, procedures, or methodology applicable to those services.¹⁹

The plain language of this provision excludes Ms. Fiola from the definition of an eligible “party” under MEAJA because she is “a person providing services” pursuant to a DHS license who was “named ... as a party in a matter which involves the licensing ... applicable to those services.”

Here, Ms. Fiola was named as the Respondent in a matter involving whether DHS had a basis for revoking her DHS license to provide family child care services due to her disqualification arising from her alleged maltreatment of a vulnerable adult at another DHS licensed facility.²⁰ Under state law, Respondent cannot provide child care pursuant to a DHS license if she is disqualified.²¹ Moreover, disqualification can arise from conduct occurring either at the child care facility or outside the child care facility because such conduct can affect the licensee’s ability to provide child care services in a safe manner.²² Because Ms. Fiola is a “party” in a “matter” which involves revocation of “the licensing ... applicable to those services” that Ms. Fiola provides under her DHS

¹⁴ *Donovan Contracting of St. Cloud, Inc. v. Minnesota Dept. of Transp.*, 469 N.W.2d 718 (Minn. App. 1991).

¹⁵ Minn. Stat. § 15.471, subd. 6.

¹⁶ Minn. Stat. § 15.472; *see also City of Mankato v. Mahoney*, 542 N.W.2d 689 (Minn. App. 1996).

¹⁷ Minn. Stat. § 15.472: *see also Donovan Contracting, supra* note 1, 469 N.W.2d 718.

¹⁸ Minn. Stat. § 15.471, subd. 8.

¹⁹ Minn. Stat. § 15.471, subd. 6(c).

²⁰ Notice and Order for Hearing (August 8, 2011).

²¹ Minn. R. 9502.0335, subp. 6(D).

²² *See* Minn. Stat. §§ 245C.14, 245C.15; Minn. R. 9502.0335, subp. 6.

child care license, she is excluded from the definition of a “party” eligible for attorneys’ fees and costs under MEAJA.²³

Licensee argues that the exclusion does not apply to her because the alleged conduct that led to her disqualification did not occur while she was providing child care services under her DHS child care license.²⁴ Ms. Fiola’s position is not supported by the plain language of the statute. The language of the statute does not limit the exclusion to matters involving conduct occurring while providing the particular services authorized by the license at issue: in this case, family child care services. As discussed above, the exclusion applies to all “matters ... involving the licensing ... applicable to those services.” To read the statute in the manner suggested by Licensee would require adding language to limit the exclusion to matters “which involve conduct occurring while providing services under the license at issue.” Only the Legislature, however, can add such language to the statute.²⁵

Moreover, such a reading of the statute would lead to an absurd result.²⁶ As discussed above, a DHS license can be revoked for conduct occurring outside of the services provided under the particular license because such conduct can affect the licensee’s ability to provide the licensed services. It would be arbitrary to read Minn. Stat. § 15.471, subd. 6(c), to exclude from the definition of “party” only those DHS licensees whose conduct arises out of the services provided under the license at issue when the Legislature has recognized that other conduct can serve as the basis for revoking a DHS license.

Finally, reading the exclusion in Minn. Stat. § 15.471, subd. 6(c), in the manner suggested by Licensee is inconsistent with MEAJA’s purpose as a limited waiver of sovereign immunity.²⁷ Licensee’s interpretation would have the effect of expanding the limited waiver of sovereign immunity in MEAJA. Such a result would be contrary to the Minnesota Supreme Court’s instruction that MEAJA is to be strictly construed to effectuate its purpose as a limited waiver of sovereign immunity.²⁸

For the reasons set forth above, the undersigned Administrative Law Judge concludes that the Licensee is not eligible to receive an award of attorneys’ fees and expenses under MEAJA because she does not meet the definition of a “party” under Minn. Stat. § 15.471, subd. 6. Therefore, it is unnecessary to consider whether the Department’s position in the contested case proceeding was substantially justified or whether the amount of attorneys’ fees and expenses requested is excessive.

J. M. C.

²³ Minn. Stat. § 15.471, subd. 6(c).

²⁴ Licensee’s Application at 3; see also, Argument of Steven Smith (January 22, 2013).

²⁵ See *Hutchinson Tech., Inc. v. Comm’r of Revenue*, 698 N.W.2d 1, 12 (Minn.2005).

²⁶ See Minn. Stat. § 645.17 (providing that the legislature does not intend a result that is absurd).

²⁷ See *Donovan Contracting*, 469 N.W.2d at 720.

²⁸ *Id.*